

6415
RECORDATION NO. _____
DEC 01 1971 - 10 46 AM
INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of October 15, 1971

among

BETHLEHEM STEEL CORPORATION,

THE ALTON & SOUTHERN RAILWAY COMPANY,
as Vendee,

and

**CHICAGO AND NORTH WESTERN
RAILWAY COMPANY**

AGREEMENT AND ASSIGNMENT

Dated as of October 15, 1971

between

BETHLEHEM STEEL CORPORATION

and

**JOHN HANCOCK MUTUAL LIFE
INSURANCE COMPANY**

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CONDITIONAL SALE AGREEMENT dated as of October 15, 1971, among BETHLEHEM STEEL CORPORATION, a Delaware corporation (hereinafter called the Vendor or Builder as more particularly set forth in Article 25 hereof), CHICAGO AND NORTH WESTERN RAILWAY COMPANY, a Wisconsin corporation (hereinafter called the Guarantor or the Lessee) and THE ALTON & SOUTHERN RAILWAY COMPANY, a Delaware corporation (hereinafter called the Vendee).

WHEREAS, the Builder agrees to construct, sell and deliver to the Vendee, and the Vendee agrees to purchase, the railroad equipment described in Annex B hereto (hereinafter called the Equipment); and

WHEREAS, the Vendee is executing a lease of the Equipment as of the date hereof to the Lessee in substantially the form annexed hereto as Annex D (hereinafter called the Lease) and the Guarantor is willing to guarantee to the Vendor the due and punctual payment of all sums payable by, and the due and punctual performance of all other obligations of, the Vendee under this Agreement and has joined in this Agreement for the purpose of setting forth the terms and conditions of such guaranty and making certain further agreements as hereinafter set forth;

Now, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. *Incorporation of Model Provisions.* Whenever this Agreement incorporates herein by reference, in whole or in part or as hereby amended, any provision of the document entitled "Model Conditional Sale Provisions for Lease Transactions" annexed to this Agreement as Part I of Annex C hereto (hereinafter called the Model CSA Provisions), such provision of the Model CSA Provisions

shall be deemed to be a part of this instrument as fully to all intents and purposes as though such provision had been set forth in full in this Agreement.

ARTICLE 2. *Construction and Sale.* Article 2 of the Model CSA Provisions is herein incorporated as Article 2 hereof.

ARTICLE 3. *Inspection and Delivery.* Article 3 of the Model CSA Provisions is herein incorporated as Article 3 hereof except that there shall be added at the end of the last paragraph thereof the following provisos:

“;provided, however, that no delivery of any unit of the Equipment shall be made until this Agreement and the Lease have been filed pursuant to Section 20c of the Interstate Commerce Act; *provided further*, that Builder shall have no obligation to deliver any unit of Equipment hereunder subsequent to the filing by or against the Vendee or the Guarantor of a petition for reorganization under Section 77 of the Bankruptcy Act and prior to the assumption, adoption or affirmation of the obligations of the Vendee or the Guarantor, as the case may be, under this Agreement by a trustee or trustees acting pursuant to a court order or decree in any proceeding under said Section 77”.

ARTICLE 4. *Purchase Price and Payment.* The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Vendee and the Guarantor. The term “Purchase Price” as used herein shall mean the base price or prices as so increased or decreased; *provided, however*, the Purchase Price

for any unit of the equipment shall not, without the consent of the Vendor, exceed 105% of the base price thereof set forth in Annex B hereto. If on any Closing Date (as hereinafter defined in this Article 4) the aggregate of the Invoiced Purchase Prices (as hereinafter defined in this Article 4) for which settlement has theretofore been and is then being made under this Agreement, would, but for the provisions of this sentence, exceed \$3,404,400 (or such higher amount as the Vendee may at its option agree to), the Builder (and any assignee of the Builder) and the Guarantor will, upon request of the Vendee, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee, as will, after giving effect to such exclusion, reduce such aggregate Invoiced Purchase Prices under this Agreement to not more than \$3,404,400 (or such higher amount as aforesaid), and the Guarantor agrees to purchase any such unit or units so excluded from this Agreement from the Builder for cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or, if the Builder and the Guarantor shall mutually agree, by means of a conditional sale, equipment trust or other appropriate method of financing.

The Equipment shall be settled for in not more than two groups of units of the Equipment delivered to and accepted by the Vendee (each such group being hereinafter called a Group) unless a greater number shall be agreed to by parties hereto. The term "Closing Date" with respect to any Group shall mean such date (not earlier than December 15, 1971 and not later than March 31, 1972, such later date being herein called the Cut-off Date), occurring not more than ten business days following presentation by the Builder to the Vendee of the invoice and the Certificate or Certificates of Acceptance for the Equipment and written notice thereof

by the Builder to the Guarantor, as shall be fixed by the Guarantor by written notice delivered to the Vendee and the Vendor at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, are authorized or obligated to remain closed.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) On the Closing Date with respect to each Group (i) an amount equal to 20% of the aggregate Purchase Price of such Group plus (ii) the amount by which (x) 80% of the Purchase Price of all units of the Equipment covered by this Agreement for which settlement has theretofore and is then being made, as set forth in the invoice or invoices therefor (said invoiced prices being herein called the Invoiced Purchase Prices), exceeds (y) the sum of \$2,650,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this clause (ii); and

(b) In 30 consecutive semiannual instalments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The instalments of the portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (said portion of the aggregate Purchase Price for such Equipment being herein called the Conditional Sale Indebtedness) shall be payable on each June 1 and December 1, commencing June 1, 1972, to and includ-

ing December 1, 1986 (or if any such date is not a business day on the next preceding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of $9\frac{1}{2}\%$ per annum and such interest shall be payable, to the extent accrued, on June 1, 1972 and on each Payment Date thereafter. The principal amount of Conditional Sale Indebtedness payable on each of the Payment Dates shall be calculated on such a basis that the aggregate of the principal and interest payable on each of such Payment Dates shall be substantially equal and such 30 instalments of principal will completely amortize the Conditional Sale Indebtedness; *provided, however*, that in calculating the amount of the first principal payment, it shall be assumed that the amount of interest payable therewith equals interest at the rates specified above on the Conditional Sale Indebtedness for one six months' period.

The Vendee will furnish to the Vendor and the Guarantor promptly after the last Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Vendee will pay interest, to the extent legally enforceable, at the rate of $10\frac{1}{2}\%$ per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for

the payment of public and private debts. Except as provided in Article 7 hereof, the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

The parties hereto contemplate (subject to the limitations set forth in the first paragraph of this Article 4) that the Vendee will furnish that portion of the Purchase Price for the Equipment as is required under subparagraph (a) of the third paragraph of this Article 4 and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by an assignee of the Builder's right, title and interest under this Agreement pursuant to an Agreement and Assignment between the Builder and John Hancock Mutual Life Insurance Company (such Agreement and Assignment being hereinafter called the Assignment and such assignee being herein called the Assignee or the Vendor as indicated in Article 25 hereof).

It is agreed that the obligation of the Vendee to pay to the Vendor any amount required to be paid pursuant to the third paragraph of this Article 4 with respect to the Equipment is specifically subject to the fulfillment, on or before the Closing Date in respect of any Group, of the following conditions (any of which may be waived by the Vendee, and payment by the Vendee of the amount specified in subparagraph (a) of the third paragraph of this Article 4 with respect to such Group shall be conclusive evidence that such conditions have been fulfilled or irrevocably waived):

(a) the Assignee shall have paid or caused to have been paid to the Builder the amounts contemplated to be paid by it as provided in the preceding paragraph of this Article 4 and in Section 6 of the Assignment and the documents required by Section 6 of the Assignment shall have been delivered;

(b) no event of default of the Guarantor specified herein or Event of Default of the Lessee under the

Agreement and all demands whatsoever hereunder. No waiver by the Vendor of any of its rights hereunder and no action by the Vendor to enforce any of its rights hereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder.

In the event that the Guarantor shall make any payments to the Vendor on account of its guaranty hereunder, the Guarantor hereby covenants and agrees that it shall not acquire any rights, by subrogation or otherwise, against the Vendee or with respect to any of the units of the Equipment by reason of such payments, all such rights being hereby irrevocably released, discharged and waived by the Guarantor; *provided, however*, that after the payment by the Guarantor to the Vendor of all sums payable under this Agreement, the Guarantor shall, by subrogation, be entitled to the rights of the Vendor against the Vendee by reason of such payment, to the extent, but only to the extent, that the Vendee has received "income and proceeds from the Equipment" (as defined in Article 4 hereof) and has not applied amounts equal to such income and proceeds to the payment, in accordance with this Agreement and subject to the limitations contained in the last paragraph of said Article 4, of sums payable by the Vendee to the Vendor hereunder.

ARTICLE 9. *Reports and Inspections.* Article 9 of the Model CSA Provisions is herein incorporated as Article 9 hereof.

ARTICLE 10. *Marking of Equipment.* The Vendee will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Annex B hereto, or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment.

and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the legend "John Hancock Mutual Life Insurance Company, Security Owner" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace or will cause to be replaced promptly any such name and words which may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Vendee may allow the Equipment to be lettered with the names or initials or other insignia customarily used by the Guarantor or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of the rights of the Guarantor or its affiliates to use the Equipment as permitted under the Lease.

ARTICLE 11. *Compliance with Laws and Rules.* Article 11 of the Model CSA Provisions is herein incorporated as Article 11 hereof.

ARTICLE 12. *Possession and Use.* Article 12 of the Model CSA Provisions is herein incorporated as Article 12 hereof.

ARTICLE 13. *Prohibition Against Liens.* Article 13 of the Model CSA Provisions is herein incorporated as Article 13 hereof.

ARTICLE 14. *Indemnities and Warranties.* Article 14 of the Model CSA Provisions is herein incorporated as part of Article 14 hereof. The agreement of the parties relating to the Builder's warranty of material and workmanship and the agreement of the parties relating to patent indemnification contained in Items 1 and 2 of Annex A hereto are herein incorporated as part of Article 14 hereof.

ARTICLE 15. *Assignments.* Article 15 of the Model CSA Provisions is herein incorporated as Article 15 hereof.

ARTICLE 16. *Defaults.* Article 16 of the Model CSA Provisions is herein incorporated as Article 16 hereof.

ARTICLE 17. *Remedies.* Article 17 of the Model CSA Provisions is herein incorporated as Article 17 hereof.

ARTICLE 18. *Applicable State Laws.* Article 18 of the Model CSA Provisions is herein incorporated as Article 18 hereof.

ARTICLE 19. *Recording.* Article 19 of the Model CSA Provisions is herein incorporated as Article 19 hereof.

ARTICLE 20. *Payment of Expenses.* The Guarantor will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to the preparation and execution of this Agreement and the first assignment of this Agreement and, if the first assignee is not acting as an agent or trustee, any subsequent assignment to such an agent or trustee (including the fees and expenses of such agent or trustee or successor thereto), or

any instrument supplemental thereto, including all reasonable fees and expenses of special counsel for the first assignee of this Agreement.

ARTICLE 21. *Article Headings; Effect and Modification of Agreement.* Article 21 of the Model CSA Provisions is herein incorporated as Article 21 hereof.

ARTICLE 22. *Notice.* Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Vendee, at 210 North Thirteenth Street, St. Louis, Missouri 63103,

(b) to the Guarantor, at 400 West Madison Street, Chicago, Illinois 60606,

(c) to the Builder, at 701 East Third Street, Bethlehem, Pennsylvania 18016,

(d) to the Vendor, after an assignment of any rights of the Vendor under this Agreement to John Hancock Mutual Life Insurance Company, at 200 Berkeley Street, Boston, Massachusetts 02117, Attention: Bond and Stock Department,

(e) to any assignee of the Vendor, or of the Vendee at such address as may have been furnished in writing to the Vendee, or the Vendor, as the case may be, and to the Guarantor, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement. A copy of all notices shall also be delivered or mailed to the Guarantor.

ARTICLE 23. *Immunities; Satisfaction of Undertakings.* No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against

any incorporator, stockholder, director or officer, past, present or future, of the Vendee, the Guarantor or the Builder (or Vendor), whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Vendee under the first paragraph of Article 7 and under Articles 6, 9, 10, 11, 13, 14 and 19 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in §§ 5, 6, 8, 9, 12 and 16 of the Lease. The Guarantor shall be liable in respect of its guaranty hereunder for such obligations under said Articles regardless of whether or not the Lease provides for the discharge of such obligations or is in effect. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 16 hereof. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

ARTICLE 24. *Law Governing.* Article 24 of the Model CSA Provisions is herein incorporated as part of Article 24 hereof; the term "Selected Jurisdiction" as used therein shall mean the State of Missouri, and the Vendee warrants that its chief place of business is in the State of Missouri.

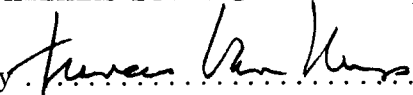
ARTICLE 25. *Definitions.* Article 25 of the Model CSA Provisions is herein incorporated as Article 25 hereof.

ARTICLE 26. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of October 15, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

BETHLEHEM STEEL CORPORATION,

[CORPORATE SEAL]

by 
Vice President

Attest:


Assistant Secretary

THE ALTON & SOUTHERN RAILWAY
COMPANY,

[CORPORATE SEAL]

by 
Vice President

Attest:


Secretary

Agreement and all demands whatsoever hereunder. No waiver by the Vendor of any of its rights hereunder and no action by the Vendor to enforce any of its rights hereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder.

In the event that the Guarantor shall make any payments to the Vendor on account of its guaranty hereunder, the Guarantor hereby covenants and agrees that it shall not acquire any rights, by subrogation or otherwise, against the Vendee or with respect to any of the units of the Equipment by reason of such payments, all such rights being hereby irrevocably released, discharged and waived by the Guarantor; *provided, however*, that after the payment by the Guarantor to the Vendor of all sums payable under this Agreement, the Guarantor shall, by subrogation, be entitled to the rights of the Vendor against the Vendee by reason of such payment, to the extent, but only to the extent, that the Vendee has received "income and proceeds from the Equipment" (as defined in Article 4 hereof) and has not applied amounts equal to such income and proceeds to the payment, in accordance with this Agreement and subject to the limitations contained in the last paragraph of said Article 4, of sums payable by the Vendee to the Vendor hereunder.

ARTICLE 9. *Reports and Inspections.* Article 9 of the Model CSA Provisions is herein incorporated as Article 9 hereof.

ARTICLE 10. *Marking of Equipment.* The Vendee will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Annex B hereto, or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment.

and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the legend "John Hancock Mutual Life Insurance Company, Security Owner" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace or will cause to be replaced promptly any such name and words which may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Vendee may allow the Equipment to be lettered with the names or initials or other insignia customarily used by the Guarantor or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of the rights of the Guarantor or its affiliates to use the Equipment as permitted under the Lease.

ARTICLE 11. *Compliance with Laws and Rules.* Article 11 of the Model CSA Provisions is herein incorporated as Article 11 hereof.

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ARTICLE 13. *Prohibition Against Liens.* Article 13 of the Model CSA Provisions is herein incorporated as Article 13 hereof.

ARTICLE 14. *Indemnities and Warranties.* Article 14 of the Model CSA Provisions is herein incorporated as part of Article 14 hereof. The agreement of the parties relating to the Builder's warranty of material and workmanship and the agreement of the parties relating to patent indemnification contained in Items 1 and 2 of Annex A hereto are herein incorporated as part of Article 14 hereof.

ARTICLE 15. *Assignments.* Article 15 of the Model CSA Provisions is herein incorporated as Article 15 hereof.

ARTICLE 16. *Defaults.* Article 16 of the Model CSA Provisions is herein incorporated as Article 16 hereof.

ARTICLE 17. *Remedies.* Article 17 of the Model CSA Provisions is herein incorporated as Article 17 hereof.

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ARTICLE 19. *Recording.* Article 19 of the Model CSA Provisions is herein incorporated as Article 19 hereof.

ARTICLE 20. *Payment of Expenses.* The Guarantor will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to the preparation and execution of this Agreement and the first assignment of this Agreement and, if the first assignee is not acting as an agent or trustee, any subsequent assignment to such an agent or trustee (including the fees and expenses of such agent or trustee or successor thereto), or

any instrument supplemental thereto, including all reasonable fees and expenses of special counsel for the first assignee of this Agreement.

ARTICLE 21. *Article Headings; Effect and Modification of Agreement.* Article 21 of the Model CSA Provisions is herein incorporated as Article 21 hereof.

ARTICLE 22. *Notice.* Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Vendee, at 210 North Thirteenth Street, St. Louis, Missouri 63103,

(b) to the Guarantor, at 400 West Madison Street, Chicago, Illinois 60606,

(c) to the Builder, at 701 East Third Street, Bethlehem, Pennsylvania 18016,

(d) to the Vendor, after an assignment of any rights of the Vendor under this Agreement to John Hancock Mutual Life Insurance Company, at 200 Berkeley Street, Boston, Massachusetts 02117, Attention: Bond and Stock Department,

(e) to any assignee of the Vendor, or of the Vendee at such address as may have been furnished in writing to the Vendee, or the Vendor, as the case may be, and to the Guarantor, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement. A copy of all notices shall also be delivered or mailed to the Guarantor.

ARTICLE 23. *Immunities; Satisfaction of Undertakings.* No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against

any incorporator, stockholder, director or officer, past, present or future, of the Vendee, the Guarantor or the Builder (or Vendor), whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Vendee under the first paragraph of Article 7 and under Articles 6, 9, 10, 11, 13, 14 and 19 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in §§ 5, 6, 8, 9, 12 and 16 of the Lease. The Guarantor shall be liable in respect of its guaranty hereunder for such obligations under said Articles regardless of whether or not the Lease provides for the discharge of such obligations or is in effect. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 16 hereof. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

ARTICLE 24. *Law Governing.* Article 24 of the Model CSA Provisions is herein incorporated as part of Article 24 hereof; the term "Selected Jurisdiction" as used therein shall mean the State of Missouri, and the Vendee warrants that its chief place of business is in the State of Missouri.

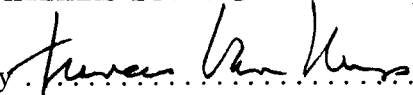
ARTICLE 25. *Definitions.* Article 25 of the Model CSA Provisions is herein incorporated as Article 25 hereof.

ARTICLE 26. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of October 15, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

BETHLEHEM STEEL CORPORATION,

[CORPORATE SEAL]

by 
Vice President

Attest:


Assistant Secretary

THE ALTON & SOUTHERN RAILWAY
COMPANY,

[CORPORATE SEAL]

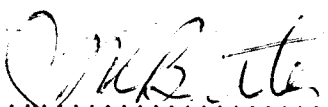
by 
Vice President

Attest:



Secretary

CHICAGO AND NORTH WESTERN
RAILWAY COMPANY,

[CORPORATE SEAL]

by 
Vice President

Attest:


Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF NORTHAMPTON } ss.:

On this 29th day of November, 1971, before me personally appeared **FRANCIS VAN NUYS**, to me personally known, who, being by me duly sworn, says that he is a Vice President of BETHLEHEM STEEL CORPORATION, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Evelyn J. Necker
.....
Notary Public

[NOTARIAL SEAL]

My Commission expires

My Commission Expires
City of Bethlehem
Northampton County
October 13, 1974

STATE OF MISSOURI }
CITY OF ST. LOUIS } ss.:

On this 23rd day of November, 1971, before me personally appeared **H.D. HUFFMAN**, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE ALTON & SOUTHERN RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

R.C. Mason
.....
Notary Public

[NOTARIAL SEAL]

My Commission expires

Sept 28, 1974.

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this 17th day of November, 1971, before me personally appeared J. M. Butler to me personally known, who, being by me duly sworn, says that he is a Vice President of CHICAGO AND NORTH WESTERN RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

..... J. J. Bray
Notary Public

[NOTARIAL SEAL]

My Commission expires May 19, 1974

ANNEX A

Item 1: The Builder warrants to the Guarantor and the Vendee that the Equipment will be built in accordance with the Specifications and standards set forth or referred to in Article 2 of the Conditional Sale Agreement to which this Annex A is attached (hereinafter called the Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Guarantor and not manufactured by the Builder), workmanship or design (except as to designs specified by the Guarantor and not developed by the Builder) under normal use and service, the Builder's obligation under this Item 1 being limited to making good at its plant any part or parts of any unit of the Equipment which shall, within one year after delivery thereof, be returned to the Builder with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective. **The foregoing warranty of the Builder is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose,** and the Builder neither makes nor authorizes any other person to make for it any other such warranty in connection with the construction and delivery of the Equipment, except as aforesaid.

The Builder further agrees with the Guarantor and the Vendee that neither the inspection as provided in Article 3 of the Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver by the Guarantor or the Vendee of any of its rights hereunder.

Item 2: Except in cases of articles or materials specified by the Guarantor and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Guarantor and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Guarantor and the Vendee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Guarantor or the Vendee, their assigns or the users of the Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Guarantor likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Guarantor and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Guarantor and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Guarantor every claim, right and cause of

action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Guarantor and purchased or otherwise acquired by the Builder for use in or about construction or operation of any of the Equipment, on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Guarantor or the users of the Equipment all and every such further assurance as may be reasonably requested by the Guarantor more fully to effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give notice to the Guarantor of any claim known to the Builder from which liability may be charged against the Guarantor hereunder and the Guarantor will give notice to the Builder of any claim known to the Guarantor from which liability may be charged against the Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

ANNEX B

Type	Builder's Specifications	Builder's Plant	Quantity	Lessee's Road Numbers (Inclusive)	Unit Base Price, including freight	Base Price, including freight	Delivery
Open top hopper cars, 100 ton capacity, AAR Class HT	3400-259-1 General Arrangement F 65342	Johnstown, Pennsylvania	200	63500 to 63699	\$17,022*	\$3,404,400	November, 1971-February, 1972, F.O.B. Johnstown, Pennsylvania to a carrier for shipment to Vendee at Harrison <i>Casper, Wyoming</i> ^{200/400} Nebraska <i>Nebraska</i> freight prepaid

4507.51
 *Freight charges estimated at \$506.94 to Harrison, Nebraska.
for

Form 7-1-70

ANNEX C

MODEL PROVISIONS

**PART I —MODEL CONDITIONAL SALE PROVISIONS
FOR LEASE TRANSACTIONS**

PART II —MODEL LEASE PROVISIONS

**PART III —MODEL ASSIGNMENT PROVISIONS FOR
LEASE TRANSACTIONS**

Part 1

**MODEL CONDITIONAL SALE PROVISIONS FOR
LEASE TRANSACTIONS**

ARTICLE 2. *Construction and Sale.* Pursuant to this Agreement, the Builder shall construct the Equipment at its plant set forth in Annex B hereto, and will sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee and the Guarantor (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications for new equipment and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such units of the Equipment, and each unit of the Equipment (except to the extent, if any, referred to in Annex A hereto and/or Article 7 hereof) will be new railroad equipment.

ARTICLE 3. *Inspection and Delivery.* The Builder will deliver the units of the Equipment to the Vendee at the place or places within the United States of America specified in Annex B hereto (or if Annex B does not specify a place or places, at the place or places within the United States of America designated from time to time by the Vendee), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before the Cut-Off Date shall be excluded herefrom. If any Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the parties to this Agreement shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. If the Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Guarantor shall be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by the Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Guarantor shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Guarantor shall determine and as shall be reasonably acceptable to the Builder.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Guarantor) and the Builder shall grant to such authorized inspectors reason-

able access to its plant. The Builder agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee of the Guarantor) shall execute and deliver to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Vendee on the date of such Certificate of Acceptance and are marked in accordance with Article 10 hereof; *provided, however*, that the Builder shall not thereby be relieved of its warranties set forth or referred to in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; *provided, however*, that the Builder shall not thereby be relieved of its warranties set forth or referred to in Article 14 hereof. The Builder and the Guarantor represent and warrant to, and agree with, the Vendee that no unit of the Equipment will be delivered to or used by the Guarantor or any other persons unless the same shall first be duly subjected to this Agreement and the Lease.

ARTICLE 5. *Title to the Equipment.* The Vendor shall and hereby does retain the full security title to and property in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and

performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Guarantor as provided in this Agreement. Any and all additions to the Equipment (except, in the case of any unit of the Equipment which is a locomotive, communications, signal and automatic control equipment or devices having a similar use which have been added to such unit by the Guarantor, the cost of which is not included in the Purchase Price of such unit and which are not required for the operation or use of such unit by the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body), and any and all parts installed on and additions and replacements made to any unit of the Equipment shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, and all the Vendee's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Vendee, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address referred to in Article 22

hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 6. *Taxes.* All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income taxes, gross receipts taxes [except gross receipts taxes in the nature of or in lieu of sales, use or rental taxes], franchise taxes measured by net income based upon such receipts, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which impositions the Vendee assumes and agrees to pay on demand in addition to

the Purchase Price of the Equipment. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; *provided, however*, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title, property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; *provided, however*, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved the payment thereof.

ARTICLE 9. *Reports and Inspections.* On or before March 31 in each year, commencing with the calendar year which begins after the expiration of 120 days from the date of this Agreement, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding cal-

endar year (or since the date of this Agreement in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 10 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Guarantor's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 10. *Marking of Equipment.* The Vendee will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Annex B hereto, or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the name of the Vendor followed by the words "Agent, Security Owner" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace or will cause to be replaced promptly any such name and words which may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which state-

ment previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Vendee may allow the Equipment to be lettered with the names or initials or other insignia customarily used by the Guarantor or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of the rights of the Guarantor or its affiliates to use the Equipment as permitted under the Lease.

ARTICLE 11. *Compliance with Laws and Rules.* During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessees' operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration of any unit of the Equipment, or in the event that any equipment or appliance on any such unit shall be required to be changed or replaced, or in the

event that any additional or other equipment or appliance is required to be installed on any such unit in order to comply with such laws or rules, the Vendee will make such alterations, changes, replacements and additions at its own expense; *provided, however*, that the Vendee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 12. *Possession and Use.* The Vendee, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Vendee may lease the Equipment to the Lessee as permitted by, and for use as provided in, the Lease, but the rights of the Lessee and its permitted assigns (the Lessee hereby so acknowledging) under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement; *provided, however*, that so long as the Lessee shall not be in default under the Lease or under this Agreement in its capacity as Guarantor or otherwise, the Lessee shall be entitled to the possession and use of the Equipment. The Vendee hereby agrees that it will not exercise any of the remedies permitted in the case of an Event of Default under and as defined in the Lease until the Vendor shall have received notice in writing of its intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents served by it upon the Lessee or served by the Lessee upon it in connection therewith.

possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee or the Guarantor any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Vendee, the Lessee or any other person and for such purpose may enter upon the premises of the Vendee or the Guarantor or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee or the Guarantor, with or without process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points on the lines or premises of the Guarantor for the delivery of the Equipment to the Vendor, the Guarantor shall (subject to the rights of the Lessee set forth in Article 12 hereof), at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points on its lines and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Guarantor until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Guarantor agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Guarantor. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee and/or the Guarantor requiring specific performance hereof. The Vendee and the Guarantor here-

income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Documents, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Security Documents. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to Article 6 of the Security Documents not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 6.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 8. *Annual Reports.* On or before March 31 in each year, commencing with the calendar year which begins after the expiration of 120 days from the date of this Lease, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documents, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the

Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by § 5 hereof and Article 10 of the Security Documents have been preserved or replaced. The Lessor shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

§ 9. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification.* **The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof,** it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have, as Vendee, under the provisions of Article 14 of the Security Documents. The Lessee's delivery of a Certificate of Delivery shall be conclusive evidence as between the Lessee and the Lessor that all Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration of any Unit, or in the event that any equipment or appliance on any such Unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such Unit in order to comply with such laws or rules, the Lessee will make such alterations, changes, replacements and additions at its own expense; *provided, however*, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documents.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit in good order and repair.

Any and all additions to any Unit (except, in the case of any Unit which is a locomotive, communications, signal and automatic control equipment or devices having a similar use which have been added to such Unit by the Lessee, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the Department of Transportation or any other applicable

regulatory body), and any and all parts installed on and additions and replacements made to any Unit shall constitute accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Security Documents) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Security Documents or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 16 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 11. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time

while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7 and 10 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the partners or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively). Whenever the term Lessor is used in this Lease it shall apply and refer to each such assignee of the Lessor.

So long as the Lessee shall not be in default under this Lease or under the Security Documents in its capacity as Guarantor or otherwise, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Security Documents, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or encumbrance which arises.

The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease or under the Security Documents in its capacity as Guarantor or otherwise, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease and the Security Documents; *provided, however*, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Security Documents) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will

possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee or the Guarantor any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Vendee, the Lessee or any other person and for such purpose may enter upon the premises of the Vendee or the Guarantor or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee or the Guarantor, with or without process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points on the lines or premises of the Guarantor for the delivery of the Equipment to the Vendor, the Guarantor shall (subject to the rights of the Lessee set forth in Article 12 hereof), at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points on its lines and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Guarantor until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Guarantor agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Guarantor. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee and/or the Guarantor requiring specific performance hereof. The Vendee and the Guarantor here-

income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Documents, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Security Documents. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to Article 6 of the Security Documents not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 6.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 8. *Annual Reports.* On or before March 31 in each year, commencing with the calendar year which begins after the expiration of 120 days from the date of this Lease, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documents, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the

Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by § 5 hereof and Article 10 of the Security Documents have been preserved or replaced. The Lessor shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

§ 9. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification.* **The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof,** it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have, as Vendee, under the provisions of Article 14 of the Security Documents. The Lessee's delivery of a Certificate of Delivery shall be conclusive evidence as between the Lessee and the Lessor that all Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration of any Unit, or in the event that any equipment or appliance on any such Unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such Unit in order to comply with such laws or rules, the Lessee will make such alterations, changes, replacements and additions at its own expense; *provided, however*, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documents.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit in good order and repair.

Any and all additions to any Unit (except, in the case of any Unit which is a locomotive, communications, signal and automatic control equipment or devices having a similar use which have been added to such Unit by the Lessee, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the Department of Transportation or any other applicable

regulatory body), and any and all parts installed on and additions and replacements made to any Unit shall constitute accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Security Documents) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Security Documents or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 16 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 11. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time

while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7 and 10 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the partners or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively). Whenever the term Lessor is used in this Lease it shall apply and refer to each such assignee of the Lessor.

So long as the Lessee shall not be in default under this Lease or under the Security Documents in its capacity as Guarantor or otherwise, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Security Documents, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or encumbrance which arises.

The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease or under the Security Documents in its capacity as Guarantor or otherwise, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease and the Security Documents; *provided, however*, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Security Documents) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will

not, upon the effectiveness of such merger or consolidation, be in default under any provision of this Lease.

§ 14. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will (unless the Unit is sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessee may designate, or, in the absence of such designation, as the Lessor may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor; the movement and storage of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If Lessor shall elect to abandon any Unit which has suffered a Casualty Occur-

income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Documents, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Security Documents. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to Article 6 of the Security Documents not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 6.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 8. *Annual Reports.* On or before March 31 in each year, commencing with the calendar year which begins after the expiration of 120 days from the date of this Lease, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documents, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the

Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by § 5 hereof and Article 10 of the Security Documents have been preserved or replaced. The Lessor shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

§ 9. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification.* **The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof,** it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have, as Vendee, under the provisions of Article 14 of the Security Documents. The Lessee's delivery of a Certificate of Delivery shall be conclusive evidence as between the Lessee and the Lessor that all Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration of any Unit, or in the event that any equipment or appliance on any such Unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such Unit in order to comply with such laws or rules, the Lessee will make such alterations, changes, replacements and additions at its own expense; *provided, however*, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documents.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit in good order and repair.

Any and all additions to any Unit (except, in the case of any Unit which is a locomotive, communications, signal and automatic control equipment or devices having a similar use which have been added to such Unit by the Lessee, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the Department of Transportation or any other applicable

regulatory body), and any and all parts installed on and additions and replacements made to any Unit shall constitute accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Security Documents) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Security Documents or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 16 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 11. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time

while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7 and 10 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the partners or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively). Whenever the term Lessor is used in this Lease it shall apply and refer to each such assignee of the Lessor.

So long as the Lessee shall not be in default under this Lease or under the Security Documents in its capacity as Guarantor or otherwise, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Security Documents, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or encumbrance which arises.

The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease or under the Security Documents in its capacity as Guarantor or otherwise, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease and the Security Documents; *provided, however*, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Security Documents) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will

not, upon the effectiveness of such merger or consolidation, be in default under any provision of this Lease.

§ 14. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will (unless the Unit is sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessee may designate, or, in the absence of such designation, as the Lessor may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor; the movement and storage of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If Lessor shall elect to abandon any Unit which has suffered a Casualty Occur-

rence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; *provided, however*, that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 7 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence while this Lease is in effect.

§ 15. *Opinion of Counsel.* On each Closing Date (as defined in the Security Documents), the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, to the effect that:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of its state of incorporation (specifying the same) with adequate corporate power to enter into the Security Documents and this Lease;

B. the Security Documents and this Lease have been duly authorized, executed and delivered by the Lessee and constitute valid, legal and binding agreements of the Lessee, enforceable in accordance with their respective terms;

C. the Security Documents (and the assignment thereof to the Vendor) and this Lease have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recordation will protect the Vendor's and the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of the Vendor or the Lessor in and to the Units;

D. no approval is required from any public regulatory body with respect to the entering into or performance of the Security Documents or this Lease;

E. the entering into and performance of the Security Documents or this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Vendor's or Lessor's right, title and interest therein; *provided, however*, that such liens may attach to the rights of the Lessee hereunder in and to the Units.

§ 16. *Recording; Expenses.* The Lessee will cause this Lease, the Security Documents and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of

the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Documents and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documents or the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Documents shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

The Lessee will pay the reasonable costs and expenses involved in the preparation and printing of this Lease. The Lessor and the Lessee will each bear the respective fees and disbursements, if any, of their respective counsel.

**MODEL ASSIGNMENT PROVISIONS FOR
LEASE TRANSACTIONS**

SECTION 3. The Builder agrees that it shall construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Vendee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Guarantor under the Lease (as defined in the Conditional Sale Agreement); and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the Conditional Sale Agreement; all *subject, however*, to the provisions of the Conditional Sale Agreement and the rights of the Vendee and the Guarantor thereunder. The Builder will not deliver any of the Equipment to the Vendee under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed and recorded in accordance with Section 20c of the Interstate Commerce Act (the Builder and its counsel being entitled to rely on

advice from special counsel for the Assignee or from the Guarantor that such filing and recordation have occurred).

SECTION 4. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Guarantor arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Guarantor by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Guarantor in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Vendee or the Guarantor and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Vendee or the Guarantor and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give notice to the Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Vendee or the Guarantor with respect to the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 6. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to the Equipment, shall pay to the Builder an amount equal to the portion of the purchase price thereof which, under the terms of said Article 4, is payable in instalments, provided that there shall have been delivered to the Assignee (with an executed counterpart to the Vendee), as provided in Article 15 of the Conditional Sale Agreement and at least five business days prior to such Closing Date,

the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) A bill of sale from the Builder to the Assignee transferring to the Assignee title to the units of the Equipment then being settled for under the Conditional Sale Agreement, warranting to the Assignee and to the Vendee that, at the time of delivery of such units under the Conditional Sale Agreement, the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Guarantor under the Lease, and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the Conditional Sale Agreement;

(b) A Certificate or Certificates of Acceptance with respect to the units of the Equipment as contemplated by Article 3 of the Conditional Sale Agreement and a Certificate or Certificates of Delivery with respect to such units as contemplated by § 2 of the Lease;

(c) A certificate of an officer of the Guarantor to the effect that none of the units of the Equipment was placed in the service of the Guarantor or otherwise was used by the Guarantor prior to delivery and acceptance of such units under the Conditional Sale Agreement and the Lease;

(d) An invoice of the Builder addressed to the Assignee for the units of the Equipment accompanied by or having endorsed thereon a certification by the Vendee and the Guarantor as to the correctness of the prices of such units;

(e) An opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and the Investors named in the Finance Agreement, dated as of such Closing Date, addressed to the Assignee and the Investors stating that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a legal, valid and binding instrument enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the respective parties thereto and is a legal, valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (v) security title to the units of the Equipment is validly vested in the Assignee and such units, at the time of delivery thereof to the Vendee under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and the rights of the Guarantor under the Lease), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the Conditional Sale Agreement or this As-

signment, or if any such authority is necessary, it has been obtained, (vii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia and (viii) registration of the Conditional Sale Agreement, this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee or such Investors;

(f) An opinion of counsel for the Vendee or the beneficial owner of the Equipment, dated as of such Closing Date, stating that the Conditional Sale Agreement and the Lease have been duly authorized, executed and delivered by the Vendee and are legal and valid instruments binding upon the Vendee and enforceable against the Vendee in accordance with their terms;

(g) An opinion of counsel for the Guarantor, dated as of such Closing Date and addressed to the Vendee as well as the Assignee, to the effect set forth in clauses (i), (ii), (iii), (v), (vi) and (vii) of subparagraph (e) above and stating that the Guarantor is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted;

(h) An opinion of counsel for the Builder, dated as of such Closing Date, to the effect set forth in clauses (iv) and (v) of subparagraph (e) above and stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, and (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder; and

(i) A receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 6) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

In giving the opinions specified in subparagraphs (e), (f), (g) and (h) of this Section 6, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinions specified in said subparagraphs (e) and (f), counsel may rely (i) as to authorization, execution and delivery by the Builder of the documents executed by the Builder

and title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement, on the opinion of counsel for the Builder and (ii) to the extent appropriate, as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Builder or the opinion of counsel for the Guarantor as to such matter.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the Agent having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available to make such payment and upon payment by the Vendee of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement. The Assignee shall not be obligated to make any above-mentioned payment at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall be subsisting under the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

It is understood and agreed that the Assignee shall not be required to make any payment with respect to, and shall have no right or interest in, any Equipment excluded from the Conditional Sale Agreement pursuant to Article 3 thereof.

SECTION 8. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agree-

ment was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee and the Guarantor, the Conditional Sale Agreement is, in so far as the Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms and that it is now in force without amendment thereto:

(b) agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

ANNEX D

LEASE OF RAILROAD EQUIPMENT

Dated as of October 15, 1971

between

**CHICAGO AND NORTH WESTERN
RAILWAY COMPANY**

and

THE ALTON & SOUTHERN RAILWAY COMPANY

LEASE OF RAILROAD EQUIPMENT dated as of October 15, 1971, between CHICAGO AND NORTH WESTERN RAILWAY COMPANY, a Wisconsin corporation (hereinafter called the Lessee), and THE ALTON & SOUTHERN RAILWAY COMPANY, a Delaware corporation (hereinafter called the Lessor).

WHEREAS, the Lessor and the Lessee propose to enter into a Conditional Sale Agreement dated as of October 15, 1971 (hereinafter called the Security Document), with BETHLEHEM STEEL CORPORATION (hereinafter called the Builder), wherein the Builder will agree to manufacture, sell and deliver to the Lessor the railroad equipment described in Schedule A hereto;

WHEREAS, the Builder will assign its interest in the Security Document to JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY (hereinafter, together with its successors and assigns, referred to as the Vendor); and

WHEREAS, the Lessee desires to lease all the units of said equipment, or such lesser number as are delivered and accepted and settled for under the Security Document on or prior to March 31, 1972 (hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee here-

under or under the Security Document, subject to all the rights and remedies of the Vendor under the Security Document:

§ 1. *Incorporation of Model Provisions.* Whenever this Lease incorporates herein by reference, in whole or in part or as hereby amended, any provision of the document entitled "Model Lease Provisions" annexed to the Security Documents as Part II of Annex C thereto (hereinafter called the Model Lease Provisions), such provision of the Model Lease Provisions shall be deemed to be a part of this instrument as fully to all intents and purposes as though such provision had been set forth in full in this Lease except that any reference to the "Security Documents" in the plural shall be deemed to mean the Security Document in the singular.

§ 2. *Delivery and Acceptance of Units.* § 2 of the Model Lease Provisions is herein incorporated as § 2 hereof.

§ 3. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease one payment on the date such Unit is settled for under the Security Document (hereinafter called the Closing Date) and 30 consecutive semiannual payments, payable on June 1 and December 1 in each year commencing with June 1, 1972. The first such payment shall be in an amount equal to 5.06125% of the Purchase Price (as defined in the Security Document) of each Unit subject to this lease less an amount equal to 0.02325% of the Purchase Price of each such unit for each day elapsed from and including December 1 to, but not including, the Closing Date. The next 30 semiannual payments shall each be in an amount equal to 5.06125% of the Purchase Price of each such Unit.

All payments provided for in this lease shall be made as follows:

(a) To the Vendor, at such address as the Vendor shall furnish to the Lessee, amounts equal to that portion of each of the 30 semiannual payments commencing with June 1, 1972, and that portion of any payment for Casualty Occurrences made pursuant to § 7 hereof, as are necessary to satisfy the obligations of the Lessor under the Security Document; and

(b) To the Lessor, as agent for the Vendor, at 210 North Thirteenth Street, St. Louis, Missouri 63103, all other amounts due hereunder.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Document, including the Lessee's rights by subrogation under Article 8 thereof, or the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy, reorganiza-

tion or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate six months after the date on which the final semiannual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, or under the Security Document in its capacity as Guarantor or otherwise, are subject to the rights of the Vendor under the Security Document. If an event of default should occur under the Security Document, the Vendor may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not so in default under this Lease or under the Security Document.

D. any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Security Document under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Security Document), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and under the Security Document shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Security Document and this Lease shall not have been duly assumed

in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental

period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on a basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, and (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States of America or any political subdivision thereof, calculated on the assumption that the Lessor's Federal, state and local taxes computed by reference to net income or excess profits are based on a 48% effective Federal tax rate and the highest effective state and local income tax and/or excess profit tax rates generally applicable to the Lessor, including therein the effect of any applicable surtax, surcharge and/or other tax or charge related thereto, and deducting from any such Federal tax 48% of the amount of any such state and local tax (such rates as so calculated being hereinafter in this Agreement called the Assumed Rates), shall be equal to such sum as, in the reasonable opinion

§ 15. *Opinion of Counsel.* § 15 of the Model Lease Provisions is herein incorporated as § 15 hereof.

§ 16. *Recording; Expenses.* The Lessee will cause this Lease, the Security Document and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Document and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Document or the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Document shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

The Lessee will pay the reasonable costs and expenses involved in the preparation and printing of this Lease. The Lessor and the Lessee will each bear the respective fees and disbursements, if any, of their respective counsel.

In order to compensate the Lessee for the expenses of recording, preparation and printing of this Lease and the Security Document, the Lessor will pay to the Lessee the

D. any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Security Document under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Security Document), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and under the Security Document shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Security Document and this Lease shall not have been duly assumed

in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental

period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on a basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, and (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States of America or any political subdivision thereof, calculated on the assumption that the Lessor's Federal, state and local taxes computed by reference to net income or excess profits are based on a 48% effective Federal tax rate and the highest effective state and local income tax and/or excess profit tax rates generally applicable to the Lessor, including therein the effect of any applicable surtax, surcharge and/or other tax or charge related thereto, and deducting from any such Federal tax 48% of the amount of any such state and local tax (such rates as so calculated being hereinafter in this Agreement called the Assumed Rates), shall be equal to such sum as, in the reasonable opinion

§ 15. *Opinion of Counsel.* § 15 of the Model Lease Provisions is herein incorporated as § 15 hereof.

§ 16. *Recording; Expenses.* The Lessee will cause this Lease, the Security Document and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Document and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Document or the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Document shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

The Lessee will pay the reasonable costs and expenses involved in the preparation and printing of this Lease. The Lessor and the Lessee will each bear the respective fees and disbursements, if any, of their respective counsel.

In order to compensate the Lessee for the expenses of recording, preparation and printing of this Lease and the Security Document, the Lessor will pay to the Lessee the

sum of \$52,000, in five consecutive annual instalments of \$10,400 each, on the anniversary of the final Closing Date in each year, commencing with the year 1973.

§ 17. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including (without limitation) an allowance for the Rapid Amortization Deduction (as defined in § 10 of this Lease), with respect to the Units.

Lessee agrees that neither it nor any corporation controlled by it (other than the Lessor), in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. Lessee agrees to keep and make available for inspection and copying by Lessor such records as will enable Lessor to determine whether it is entitled to the full benefit of the Rapid Amortization Deduction with respect to the Units.

The Lessee represents, agrees and warrants that (i) at the time the Lessor becomes the owner of the Units for purposes of section 184 of the Code and at all times thereafter during the term of this Lease, the Units will be "rolling stock of the type used by a common carrier engaged in the furnishing or sale of transportation by railroad and subject to the jurisdiction of the Interstate Commerce Commission" within the meaning of section 184(d) of the Code, (ii) at the time the Lessor becomes the owner of the Units for purposes of section 184 of the Code the Units will not

have been used by any person so as to preclude "the original use of such rolling stock" within the meaning of section 184 of the Code from commencing with the Lessor and no investment credit, depreciation or other tax benefits will have been claimed by any person with respect thereto, (iii) the Lessee is as of the date hereof and will be at all times during the term of this Lease "a domestic common carrier by railroad" within the meaning of section 184(d)(1)(A) of the Code, and (iv) during the term of this Lease, each Unit will, within the meaning of section 184(d)(1)(A) of the Code, solely be "used by a domestic common carrier by railroad on a full-time basis, or on a part-time basis if its only additional use is an incidental use by a Canadian or Mexican common carrier by railroad on a per diem basis."

§ 18. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 10½% per annum of the overdue rentals for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 19. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

(a) if to the Lessor, at 210 North Thirteenth Street, St. Louis, Missouri 63103; and

(b) if to the Lessee, at 400 West Madison Street, Chicago, Illinois 60606.

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 20. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

§ 21. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of October 15, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 22. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Missouri, *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto have executed
or caused this instrument to be executed as of the date first
above written.

THE ALTON & SOUTHERN RAILWAY
COMPANY,

by
Vice President

[CORPORATE SEAL]

Attest:

.....
Secretary

CHICAGO AND NORTH WESTERN
RAILWAY COMPANY,

by
Vice President

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

§ 15. *Opinion of Counsel.* § 15 of the Model Lease Provisions is herein incorporated as § 15 hereof.

§ 16. *Recording; Expenses.* The Lessee will cause this Lease, the Security Document and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Document and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Document or the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Document shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

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sum of \$52,000, in five consecutive annual instalments of \$10,400 each, on the anniversary of the final Closing Date in each year, commencing with the year 1973.

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Lessee agrees that neither it nor any corporation controlled by it (other than the Lessor), in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. Lessee agrees to keep and make available for inspection and copying by Lessor such records as will enable Lessor to determine whether it is entitled to the full benefit of the Rapid Amortization Deduction with respect to the Units.

The Lessee represents, agrees and warrants that (i) at the time the Lessor becomes the owner of the Units for purposes of section 184 of the Code and at all times thereafter during the term of this Lease, the Units will be "rolling stock of the type used by a common carrier engaged in the furnishing or sale of transportation by railroad and subject to the jurisdiction of the Interstate Commerce Commission" within the meaning of section 184(d) of the Code, (ii) at the time the Lessor becomes the owner of the Units for purposes of section 184 of the Code the Units will not

have been used by any person so as to preclude "the original use of such rolling stock" within the meaning of section 184 of the Code from commencing with the Lessor and no investment credit, depreciation or other tax benefits will have been claimed by any person with respect thereto, (iii) the Lessee is as of the date hereof and will be at all times during the term of this Lease "a domestic common carrier by railroad" within the meaning of section 184(d)(1)(A) of the Code, and (iv) during the term of this Lease, each Unit will, within the meaning of section 184(d)(1)(A) of the Code, solely be "used by a domestic common carrier by railroad on a full-time basis, or on a part-time basis if its only additional use is an incidental use by a Canadian or Mexican common carrier by railroad on a per diem basis."

§ 18. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 10½% per annum of the overdue rentals for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 19. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

(a) if to the Lessor, at 210 North Thirteenth Street, St. Louis, Missouri 63103; and

(b) if to the Lessee, at 400 West Madison Street, Chicago, Illinois 60606.

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 20. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

§ 21. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of October 15, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 22. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Missouri, *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto have executed
or caused this instrument to be executed as of the date first
above written.

THE ALTON & SOUTHERN RAILWAY
COMPANY,

by
Vice President

[CORPORATE SEAL]

Attest:

.....
Secretary

CHICAGO AND NORTH WESTERN
RAILWAY COMPANY,

by
Vice President

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

STATE OF MISSOURI }
CITY OF ST. LOUIS } ss.:

On this day of , 1971, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of THE ALTON & SOUTHERN RAILWAY COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[NOTARIAL SEAL]

My Commission expires

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this day of , 1971, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of CHICAGO AND NORTH WESTERN RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[NOTARIAL SEAL]

My Commission expires

SCHEDULE A

Type	Builder's Specifications	Builder's Plant	Quantity	Lessee's Road Numbers (Both Inclusive)	Unit Base Price, Including Freight	Total Base Price, Including Freight	Delivery
Open top hopper cars, 100 ton capacity, AAR Class HT	3400-259-1 General Arrangement F 65342	Johnstown, Pennsylvania	200	63500 to 63699	\$17,022*	\$3,404,400	November, 1971- February, 1972, F.O.B. Johnstown, Pennsylvania, to a carrier for shipment to Lessor at Harrison, Nebraska, freight prepaid

*Freight charges estimated at \$506.94 to Harrison, Nebraska.

AGREEMENT AND ASSIGNMENT dated as of October 15, 1971, between BETHLEHEM STEEL CORPORATION (hereinafter called the Builder), and JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY (hereinafter called the Assignee).

WHEREAS the Builder, THE ALTON & SOUTHERN RAILWAY COMPANY (hereinafter called the Vendee) and CHICAGO AND NORTH WESTERN RAILWAY COMPANY (hereinafter called the Guarantor) have entered into a Conditional Sale Agreement dated as of October 15, 1971 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Vendee of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. *Incorporation of Model Provisions.* Whenever this Assignment incorporates herein by reference, in whole or in part or as hereby amended, any provision of the document entitled "Model Assignment Provisions for Lease Transactions" annexed to the Conditional Sale Agreement as Part III of Annex C thereto (hereinafter called the Model Assignment Provisions), such provision of the Model Assignment Provisions shall be deemed to be a part of this instrument as fully to all intents and purposes as though such provision had been set forth in full herein.

SECTION 2. The Builder hereby assigns, transfers, and sets over unto the Assignee, its successors and assigns:

(a) All the right, security title and interest of the Builder in and to each unit of the Equipment;

(b) All the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof, in the first paragraph and in subparagraph (a) of the third paragraph of Article 4 thereof, in the last paragraph of Article 15 thereof and reimbursement for taxes paid or incurred by the Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Builder under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee or the Guarantor under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited by subparagraph (b) of this paragraph, all the Builder's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Vendee or the Guarantor to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however*, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations

of the Builder to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained in Article 14 of the Conditional Sale Agreement or relieve the Vendee or the Guarantor from their respective obligations to the Builder contained in Articles 2, 3, 4, 6, 8 and 14 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Builder to the Vendee with respect to the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee and the Guarantor with the terms and agreements on their parts to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 3. Section 3 of the Model Assignment Provisions is herein incorporated as Section 3 hereof.

SECTION 4. Section 4 of the Model Assignment Provisions is herein incorporated as Section 4 hereof.

SECTION 5. The Builder will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, at the time of delivery

thereof to the Vendee, in letters not less than one inch in height, the following legend:

“JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY,
SECURITY OWNER”.

SECTION 6. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to the Equipment, shall pay to the Builder an amount equal to the portion of the purchase price thereof which, under the terms of said Article 4, is payable in installments, provided that there shall have been delivered to the Assignee (with an executed counterpart to the Vendee), as provided in Article 15 of the Conditional Sale Agreement and at least five business days prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) A bill of sale from the Builder to the Assignee transferring to the Assignee title to the units of the Equipment then being settled for under the Conditional Sale Agreement, warranting to the Assignee and to the Vendee that, at the time of delivery of such units under the Conditional Sale Agreement, the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Guarantor under the Lease, and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the Conditional Sale Agreement;

(b) A Certificate or Certificates of Acceptance with respect to the units of the Equipment as contemplated by Article 3 of the Conditional Sale Agreement and a Certificate or Certificates of Delivery with respect to such units as contemplated by § 2 of the Lease;

(c) A certificate of an officer of the Guarantor to the effect that none of the units of the Equipment was placed in the service of the Guarantor or otherwise was used by the Guarantor prior to delivery and acceptance of such units under the Conditional Sale Agreement and the Lease;

(d) An invoice of the Builder addressed to the Assignee for the units of the Equipment accompanied by or having endorsed thereon a certification by the Vendee and the Guarantor as to the correctness of the prices of such units;

(e) An opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee, dated as of such Closing Date, stating that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a legal, valid and binding instrument enforceable in accordance with its terms, (ii) this Assignment has been duly authorized, executed and delivered by the respective parties thereto and is a legal, valid and binding instrument, (iii) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (iv) security title to the units of the Equipment is validly vested in the Assignee and such units, at the time of delivery thereof to the Vendee under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other

COMMONWEALTH OF PENNSYLVANIA } ss.:
 COUNTY OF NORTHAMPTON

On this 29th day of November, 1971, before me personally appeared FRANCIS VAN NUY, to me personally known, who, being by me duly sworn, says that he is a Vice President of BETHLEHEM STEEL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

... Evelyn S. Hecker ...

Notary Public

My Commission Expires

City of Bethlehem

Northampton County

October 12, 1974

[NOTARIAL SEAL]

My Commission expires

COMMONWEALTH OF MASSACHUSETTS } ss.:
 COUNTY OF SUFFOLK

On this 30th day of November, 1971, before me personally appeared David M. Munro, to me personally known, who, being by me duly sworn, says that he is a Senior Investment Officer of JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

... Paul H. Embler ...

Notary Public

[NOTARIAL SEAL]

My Commission expires Dec 22, 1972

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of October 15, 1971.

THE ALTON & SOUTHERN RAILWAY
COMPANY,

by 
Vice President

CHICAGO AND NORTH WESTERN RAILWAY
COMPANY,

by 
Vice President

In giving the opinions specified in subparagraphs (e), (f), (g) and (h) of this Section 6, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinions specified in said subparagraphs (e) and (f), counsel may rely as to authorization, execution and delivery by the Builder of the documents executed by the Builder and title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement, on the opinion of counsel for the Builder and in giving the opinion specified in said subparagraph (e), counsel may also rely, as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Builder, the opinion specified in subparagraph (j), or the opinion of counsel for the Guarantor or the Vendee as to such matter.

The Assignee shall not be obligated to make any above-mentioned payment at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall be subsisting under the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

It is understood and agreed that the Assignee shall not be required to make any payment with respect to, and shall have no right or interest in, any Equipment excluded from the Conditional Sale Agreement pursuant to Article 3 thereof.

SECTION 7. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee or the Guarantor thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 15 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

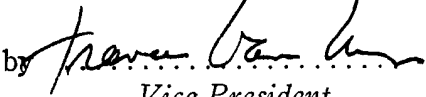
SECTION 8. Section 8 of the Model Assignment Provisions is herein incorporated as Section 8 hereof.

SECTION 9. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Missouri; *provided, however*, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of the Equipment.

SECTION 10. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although this Assignment is dated as of October 15, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

BETHLEHEM STEEL CORPORATION,

by  Vice President

[CORPORATE SEAL]

Attest:

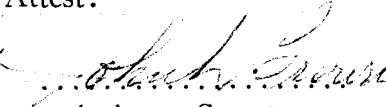

Assistant Secretary

JOHN HANCOCK MUTUAL LIFE
INSURANCE COMPANY,

by  Senior Investment Officer

[CORPORATE SEAL]

Attest:


Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA } ss.:
 COUNTY OF NORTHAMPTON

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... Evelyn S. Hecker ...

Notary Public

My Commission Expires

City of Bethlehem

Northampton County

October 12, 1974

[NOTARIAL SEAL]

My Commission expires

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 COUNTY OF SUFFOLK

On this 30th day of November, 1971, before me personally appeared David M. Munro, to me personally known, who, being by me duly sworn, says that he is a Senior Investment Officer of JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

... David M. Munro ...

Notary Public

[NOTARIAL SEAL]

My Commission expires Dec 22, 1972

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of October 15, 1971.

THE ALTON & SOUTHERN RAILWAY
COMPANY,

by 
Vice President

CHICAGO AND NORTH WESTERN RAILWAY
COMPANY,

by 
Vice President